

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEARNING ANNEX HOLDINGS, LLC,
LEARNING ANNEX, LLC, and
LEARNING ANNEX, L.P.,

Plaintiffs,

- against -

RICH GLOBAL, LLC, and
CASHFLOW TECHNOLOGIES, INC.,

Defendants.

SHIRA A. SCHEINDLIN, U.S.D.J.:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/11/12

ORDER
09 Civ. 4432 (SAS)

On July 13, 2011, this Court heard oral arguments concerning whether defendants engaged in wrongful conduct sufficient to establish unjust enrichment.¹ On July 20, 2011, defendants filed an opposition to plaintiffs' motion pursuant to Rule 25 of the Federal Rules of Civil Procedure,² which also included a section titled "Conclusion of Argument" seeking "to complete their portion of the oral argument on Defendants' Motion for Judgment as a Matter of Law that was held

¹ See 7/13/11 Transcript ("Tr.") [Docket No. 109].

² See *Learning Annex Holdings, LLC v. Rich Global, LLC*, No. 09 Civ. 4432, 2011 WL 3423927 (S.D.N.Y. Aug. 3, 2011) (granting plaintiffs' Rule 25 motion to join Learning Annex, L.P. as a plaintiff).

on July 13, 2011.”³ Plaintiffs moved to strike the “Conclusion of Argument” because they contended it was beyond the proper scope of an opposition to the Rule 25 motion.⁴ Plaintiffs further argued that defendants failed to comply with the Local Rule that applies when a party seeks relief beyond the denial of a motion.⁵ This motion is largely moot now as the parties have fully briefed this exact issue in their post-trial memoranda,⁶ and I have declined to address this issue on the merits. However, in the interest of allowing a complete record, I hereby deny plaintiffs’ motion to strike.

Procedural niceties aside, plaintiffs will suffer no prejudice from allowing the “Conclusion of Argument” to remain part of the record. Defense counsel did not have an opportunity to conclude his oral argument on unjust

³ Defendants’ Conclusion of Argument and Opposition to Plaintiffs’ Rule 25 Motion [Docket No. 96] at 1.


⁴ See Plaintiffs’ Motion to Strike Defendants’ Conclusion of Argument [Docket No. 97] at 3 (“Pursuant to Local Civil Rule 7.3, opposition papers should be limited to relief seeking the denial of the motion.”).

⁵ See *id.* at 4 (“Rich Dad’s memorandum does not contain the necessary elements of a motion as required by the [sic] Local Rule 7.1, including a notice of motion, which is required when a party seeks relief beyond denial of the motion.”).

⁶ See Plaintiffs’ Memorandum of Law in Support of Their Motion to Reinstate Their Claim for Unjust Enrichment and for Entry of Judgment on That Claim [Docket No. 129] at 13-19; Memorandum in Opposition to Plaintiffs’ Motion to Reinstate Claim for Unjust Enrichment and for Entry of Judgment on That Claim [Docket No. 136] at 9-12.

enrichment,⁷ and plaintiffs had ample opportunity to respond to defendants' arguments in their post-trial motion. Accordingly, plaintiffs' motion to strike defendants' "Conclusion of Argument" is denied. The Clerk of the Court is directed to close this motion [Docket No. 97].

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
January 11, 2012

⁷ See Tr. at 1080.

-Appearances-

For Plaintiffs:

Jonathan Harris, Esq.
Julie Withers, Esq.
Charlotte Houghteling, Esq.
Harris Cutler & Houghteling LLP
111 Broadway, Suite 402
New York, New York 10006
(212) 397-3370

David Deitch, Esq.
Ifrah PLLC
1627 Eye Street NW, Suite 1100
Washington, D.C. 20006
(202) 524-4147

Edwin G. Schallert, Esq.
Debevoise & Plimpton, LLP
919 Third Avenue, 31st Floor
New York, New York 10022
(212) 909-6000

For Defendants:

John D. Rapoport, Esq.
John D. Rapoport, PC
c/o Marulli, Lindenbaum, LLP
5 Hanover Square, 4th Floor
New York, New York 10022
(914) 588-3415

Lewis Richard Clayton, Esq.
Daniel J. Leffell, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3215